

AMENDED IN SENATE APRIL 26, 2016
AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1295

Introduced by Senator Nielsen

February 19, 2016

An act to amend Section 2962 of the Penal Code, relating to mentally ill prisoners.

LEGISLATIVE COUNSEL'S DIGEST

SB 1295, as amended, Nielsen. Mentally ill prisoners.

Existing law requires, as a condition of parole, a prisoner who has a severe mental disorder that is not in remission and who meets specified criteria to be treated by the State Department of State Hospitals and provided the necessary treatment. In order for that commitment to occur, existing law requires, among other criteria, that the severe mental disorder be one of the causes of, or an aggravating factor in, the commission of the crime, as defined, for which the prisoner was sentenced to prison. Existing law also requires the prisoner to have been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release. Existing law establishes procedures for the evaluation of a prisoner under these provisions by specified health practitioners of the State Department of State Hospitals and the Department of Corrections and Rehabilitation.

This bill would authorize the use of certain documentary evidence ~~or testimony in those procedures~~ for purposes of satisfying the criteria ~~under the above-described provisions, as specified.~~ *used to evaluate whether a prisoner released on parole is required to be treated by the State Department of State Hospitals.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2962 of the Penal Code is amended to
2 read:

3 2962. As a condition of parole, a prisoner who meets the
4 following criteria shall ~~be required to be treated~~ *provided necessary*
5 ~~treatment~~ by the State Department of State Hospitals, and the State
6 Department of State Hospitals shall provide the necessary
7 ~~treatment~~ *as follows:*

8 (a) (1) The prisoner has a severe mental disorder that is not in
9 remission or that cannot be kept in remission without treatment.

10 (2) The term “severe mental disorder” means an illness or
11 disease or condition that substantially impairs the person’s thought,
12 perception of reality, emotional process, or judgment; or which
13 grossly impairs behavior; or that demonstrates evidence of an acute
14 brain syndrome for which prompt remission, in the absence of
15 treatment, is unlikely. The term “severe mental disorder,” as used
16 in this section, does not include a personality or adjustment
17 disorder, epilepsy, mental retardation or other developmental
18 disabilities, or addiction to or abuse of intoxicating substances.

19 (3) The term “remission” means a finding that the overt signs
20 and symptoms of the severe mental disorder are controlled either
21 by psychotropic medication or psychosocial support. A person
22 “cannot be kept in remission without treatment” if during the year
23 prior to the question being before the Board of Parole Hearings or
24 a trial court, he or she has been in remission and he or she has been
25 physically violent, except in self-defense, or he or she has made
26 a serious threat of substantial physical harm upon the person of
27 another so as to cause the target of the threat to reasonably fear
28 for his or her safety or the safety of his or her immediate family,
29 or he or she has intentionally caused property damage, or he or
30 she has not voluntarily followed the treatment plan. In determining
31 if a person has voluntarily followed the treatment plan, the standard
32 shall be whether the person has acted as a reasonable person would
33 in following the treatment plan.

1 (b) The severe mental disorder was one of the causes of, or was
2 an aggravating factor in, the commission of a crime for which the
3 prisoner was sentenced to prison.

4 (c) The prisoner has been in treatment for the severe mental
5 disorder for 90 days or more within the year prior to the prisoner's
6 parole or release.

7 (d) (1) Prior to release on parole, the person in charge of treating
8 the prisoner and a practicing psychiatrist or psychologist from the
9 State Department of State Hospitals have evaluated the prisoner
10 at a facility of the Department of Corrections and Rehabilitation,
11 and a chief psychiatrist of the Department of Corrections and
12 Rehabilitation has certified to the Board of Parole Hearings that
13 the prisoner has a severe mental disorder, that the disorder is not
14 in remission, or cannot be kept in remission without treatment,
15 that the severe mental disorder was one of the causes or was an
16 aggravating factor in the prisoner's criminal behavior, that the
17 prisoner has been in treatment for the severe mental disorder for
18 90 days or more within the year prior to his or her parole release
19 day, and that by reason of his or her severe mental disorder the
20 prisoner represents a substantial danger of physical harm to others.
21 For prisoners being treated by the State Department of State
22 Hospitals pursuant to Section 2684, the certification shall be by a
23 chief psychiatrist of the Department of Corrections and
24 Rehabilitation, and the evaluation shall be done at a state hospital
25 by the person at the state hospital in charge of treating the prisoner
26 and a practicing psychiatrist or psychologist from the Department
27 of Corrections and Rehabilitation.

28 (2) If the professionals doing the evaluation pursuant to
29 paragraph (1) do not concur that (A) the prisoner has a severe
30 mental disorder, (B) that the disorder is not in remission or cannot
31 be kept in remission without treatment, or (C) that the severe
32 mental disorder was a cause of, or aggravated, the prisoner's
33 criminal behavior, and a chief psychiatrist has certified the prisoner
34 to the Board of Parole Hearings pursuant to this paragraph, then
35 the Board of Parole Hearings shall order a further examination by
36 two independent professionals, as provided for in Section 2978.

37 (3) If at least one of the independent professionals who evaluate
38 the prisoner pursuant to paragraph (2) concurs with the chief
39 psychiatrist's certification of the issues described in paragraph (2),
40 this subdivision shall be applicable to the prisoner. The

professionals appointed pursuant to Section 2978 shall inform the prisoner that the purpose of their examination is not treatment but to determine if the prisoner meets certain criteria to be involuntarily treated as a mentally disordered offender. It is not required that the prisoner appreciate or understand that information.

(4) The introduction into evidence of a certified copy of the chief psychiatrist's certification prepared pursuant to paragraph (2) shall create a rebuttable presumption that the 90 days or more of treatment required by subdivision (c) has been provided.

(e) The crime referred to in subdivision (b) meets both of the following criteria:

(1) The defendant received a determinate sentence pursuant to Section 1170 for the crime.

(2) The crime is one of the following:

(A) Voluntary manslaughter.

(B) Mayhem.

(C) Kidnapping in violation of Section 207.

(D) Any robbery wherein it was charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(E) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of the carjacking.

(F) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(G) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(H) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(I) Lewd acts on a child under 14 years of age in violation of Section 288.

(J) Continuous sexual abuse in violation of Section 288.5.

(K) The offense described in subdivision (a) of Section 289 where the act was accomplished against the victim's will by force,

1 violence, duress, menace, or fear of immediate and unlawful bodily
2 injury on the victim or another person.

3 (L) Arson in violation of subdivision (a) of Section 451, or arson
4 in violation of any other provision of Section 451 or in violation
5 of Section 455 where the act posed a substantial danger of physical
6 harm to others.

7 (M) Any felony in which the defendant used a firearm which
8 use was charged and proved as provided in Section 12022.5,
9 12022.53, or 12022.55.

10 (N) A violation of Section 18745.

11 (O) Attempted murder.

12 (P) A crime not enumerated in subparagraphs (A) to (O),
13 inclusive, in which the prisoner used force or violence, or caused
14 serious bodily injury as defined in paragraph (4) of subdivision (f)
15 of Section 243.

16 (Q) A crime in which the perpetrator expressly or impliedly
17 threatened another with the use of force or violence likely to
18 produce substantial physical harm in such a manner that a
19 reasonable person would believe and expect that the force or
20 violence would be used. For purposes of this subparagraph,
21 substantial physical harm shall not require proof that the threatened
22 act was likely to cause great or serious bodily injury.

23 (f) For purposes of meeting the criteria set forth in this section,
24 the existence or nature of the crime, as defined in paragraph (2)
25 of subdivision (e), for which the prisoner has been convicted may
26 be shown with documentary evidence or pursuant to the testimony
27 of the psychologist or psychiatrist who evaluated the prisoner
28 regarding the mentally disordered offender criteria: *evidence*. The
29 details underlying the commission of the offense that led to the
30 conviction, including the use of force or violence, causing serious
31 bodily injury, or the threat to use force or violence likely to produce
32 substantial physical harm, may be shown by documentary evidence,
33 including, but not limited to, preliminary hearing transcripts, trial
34 transcripts, probation and sentencing reports, and evaluations by
35 the State Department of State Hospitals, or pursuant to the
36 testimony of the psychologist or psychiatrist who evaluated the
37 prisoner regarding the mentally disordered offender criteria:
38 *Hospitals*.

- 1 (g) As used in this chapter, “substantial danger of physical harm”
- 2 does not require proof of a recent overt act.

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